

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 7339 of 2005(W)

PETITIONER:

**V.V.SATHIMANI, AGED 42 YEARS,
W/O.RAMAKRISHNAN K.A.,
NEAR CULTURAL CLUB, KARUVACHERRY P.O., PAYYANNUR.**

**BY ADV. SRI.M.V.AMARESAN
SRI.V.N.RAMESAN NAMBISAN**

RESPONDENTS:

- 1. THE PAYYANNUR EDUCATIONAL SOCIETY,
REP. BY ITS PRESIDENT, P.O. PAYYANUR, KANNUR**
- 2. THE DEPUTY DIRECTOR OF COLLEGIATE
EDUCATION, KOZHIKODE.**
- 3. KANNUR UNIVERSITY, REP. BY ITS
REGISTRAR, KANNUR UNIVERSITY, KANNUR.**
- 4. ANJANA P.T., D/O.PROF. CHINDANKUTTY,
MADATHIL KOLIYATH HOUSE, LECTURER IN-
PAYYANNUR COLLEGE IN CHEMISTRY DEPARTMENT,
PAYYANNUR, KANNUR.**

**BY ADV. SRI.KALEESWARAM RAJ
SRI.MOHAMMED MUSTAQUE, SC, KANNUR UTY.
SRI.TOJAN J. VATHIKULAM
SRI.K.JAJU BABU
SRI.P.V.MOHANAN
BY GOVERNMENT PLEADER SRI.T.T.MUHAMMED**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06/02/2007, THE COURT ON 15/06/2007 DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE APPOINTMENT ORDER DT. 25.9.87.

EXT.P2:- COPY OF THE APPOINTMENT ORDER DT. 31.8.88.

EXT.P3:- COPY OF THE RELEVANT NOTIFICATION IN MATHRUBHOOMI DAILY DT. 13.12.03.

EXT.P4:- COPY OF THE REQUEST DT. 18.2.03 SUBMITTED BEFORE THE 1ST RESPONDENT SEEKING RE-APPOINTMENT BY REGISTERED POST.

EXT.P4(a):- COPY OF THE POSTAL ACKNOWLEDGMENT CARD DT.22.12.03.

EXT.P5:- COPY OF THE ORDER BEARING NO.11899/B3/97/H.EDN. DT. 3.7.97.

EXT.P6:- COPY OF THE CERTIFICATE DT. 29.5.89.

EXT.P7:- COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT BEARING NO.TS(D) 87 DT. 2.1.88.

EXT.P8:- COPY OF THE PAGE 5 AND 7 OF SERVICE BOOKED THE PETITIONER.

RESPONDENTS EXHIBITS

EXT.R4(a):- COPY OF THE PROCEEDINGS ISSUED BY THE 1ST RESPONDENT APPOINTING THIS DEPONENT TO THE PERMANENT RETIREMENT VACANCY OF LECTURER IN CHEMISTRY AROSE ON ACCOUNT OF THE RETIREMENT OF SRI.A.P.ARAVINDAKSHAN PILLAI DT. 18.11.2005.

/TRUE COPY/

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K.M.JOSEPH, J.

WP.(C) No.7339 OF 2005

Dated this the 15th day of June, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner was appointed against a leave vacancy of Junior Lecturer in the Department of Chemistry in the first respondent College vide Ext.P1 order of appointment. This was preceded by a selection process under the relevant regulations. Petitioner was appointed on 25.9.1987 pursuant to Ext.P1 and she worked till 15.6.1988. Thereafter a vacancy arose in the same department. She was appointed as per Ext.P2 appointment order dated 31.8.1988. Ext.P2 order of appointment was due to her claim over the vacancy which she acquired by virtue of Ext.P1. She has claim over the next arising vacancy as she had worked as Junior Lecturer for two spells. The first respondent cannot notify the next arising vacancy as the petitioner has a lien over the same, but Ext.P3 notification was issued on 13.12.2003 by the first respondent. One vacancy in Chemistry department is notified. Petitioner has lien. Petitioner made a request before the first respondent seeking reappointment vide Ext.P4. Though first

respondent received Ext.P4, petitioner was not reappointed nor given any reply. Ext.P5 is an order dated 3.7.1997, as per which the Secretary to the Government has inter alia directed that when teachers who have been retrenched for want of vacancies have acquired a right on future appointment as on 24.4.1997 are available they may be appointed in such vacancies on a regular basis. It is stated that the petitioner has in view of Exts.P1 and P2 had acquired a claim as on the cut off date 24.4.1997 as disclosed in Ext.P5. Ext.P6 is the certificate issued by the Principal of the College showing that petitioner has worked for two spells. Ext.P7 is produced to show that the first respondent has given appointment on the basis of lien. It is stated that during the pendency of the writ petition the fourth respondent was appointed in the vacancy of Chemistry Lecturer in disregard to a preferential claim over the post. It is stated to be against Section 65 of Kannur University Act and illegal. Petitioner seeks a direction to the first respondent to grant the petitioner reappointment as Lecturer in the department of Chemistry in Payyannur College against the vacancy notified in Ext.P3, to declare that attempt of the first respondent to

hold fresh selection to the post of Junior Lecturer to the Department of Chemistry in Payyannur College, disregard of the claim of the petitioner over the said vacancy is arbitrary and illegal, to quash the order of appointment of the fourth respondent and to declare that the appointment of the fourth respondent is against law and in disregard of the preferential claim of the petitioner.

2. The third respondent University has filed counter affidavit inter alia stating as follows:

The appointment of the petitioner in two spells in the College of the first respondent was in the M.Phil deputation vacancies. As per the guidelines, for the appointment of the substitute teacher Faculty Improvement Programme deputation vacancies framed in the Kannur University in the line with the decisions of the meeting convened by the Director of Collegiate Education, Thiruvananthapuram the appointed teacher shall have no claim for future appointment. The petitioner, who was Junior Lecturer appointed in the M.Phil deputation vacancy in the period mentioned has enjoyed the claim for future appointment. Some Junior Lecturers in the FIP deputation vacancies in

the said period in certain private affiliated colleges under the University are re-appointed to the permanent post on the basis of their acquired claims and the University has approved their appointments. It is further stated that as per Government Order dated 3.7.1997 it has been made clear that teachers who have been retrenched for want of vacancies and who have already acquired a right on future appointment as on 24.4.1997 are available, they may be appointed in such vacancies on regular vacancies.

3. In the counter affidavit filed by the first respondent it is *inter alia* stated as follows:

Petitioner was appointed on deputation vacancy. The deputation vacancy was in furtherance to a FIP designed and implemented by the UGC. Deputation cannot be treated as leave. Both are different and distinct incidents of service. The appointment of the petitioner is for a specific period and she does not acquire any right and much less any right to future appointment. The second spell is also on account of a deputation vacancy. It is further stated that the appointment of the petitioner was in a separate cadre, the cadre of Junior Lecturer. After

the abolition of Pre-degree course and after the Pre-degree Abolition Act, the post of cadre no longer exist. It is abolished by operation of law. The vacancy of Junior Lecturer never arose in the College. A Junior Lecturer cannot teach in all the classes. It is stated that even when vacancies arose after the said two spans, petitioner has not applied for the post when Ext.P3 notification was issued. Ext.P4 is not an application. It is stated that Ext.P5 does not contemplate any such reappointment. The right to future appointment as on 24.9.1997 is not available to the petitioner on the basis of the said order. It is stated that Ext.P5 is governing only the case of leave vacancies and not the case of a deputation vacancy which arose on account of FIP. It will affect the FIP, it is stated, if the petitioner's contention is accepted. Ext.R1(a) is an order issued by the Government of Kerala constituting the empowered Committee. Ext.R1(b) is an order dated 3.7.1997. It will show that the Committee took the decision for the purpose of protecting the right of the teachers who were appointed in leave vacancies and who are retrenched for want of vacancies. Ext.P5 is to be understood in this context, it is stated. There was no leave vacancy,

it is stated in either of the two spans referred to by the petitioner. It is stated that the salary due to the petitioner, who was appointed in deputation vacancy in connection with the FIP of UGC also is paid by the UGC as grant. It is not paid by the Government or by the University or by the management. Thus the appointment of the petitioner is something resembling an arrangement or contract between the petitioner and the UGC. Ext.R1(c) is produced to show that salary has been drawn from the UGC through the then Principal of the College. Ext.R1(d) is an undertaking issued by the first respondent along with the Principal of the College submitted before the UGC to the effect that they will retain the petitioner during the entire period of deputation and that the salary and other allowances due to the substitute teacher will be received from the UGC and the same will be remitted to the Government Account. Ext.R1(e) is produced to show the actual nature of FIP. It is stated that pursuant to Ext.P3, 20 candidates applied and and Smt. P.T.Anjana was selected and appointed.

4. In the reply affidavit filed by the petitioner, it is inter alia stated as follows:

As per order dated 12.2.1996 Government had created a separate cadre of Lecturers for teaching exclusively for pre degree with qualification and method of appointment different from that of regular Lecturer. Post Graduate degree with 50% mark alone is sufficient for such post. Before 1996 there was no such post. The appointment of the petitioner was not as a Junior Lecturer as contemplated in the said Government Order to teach Pre-Degree alone. Petitioner was appointed to teach both Pre-Degree as well as degree, for which she was competent also. She had acquired M.Sc in 1984 with 66% marks and she had acquired NET with Junior Research Fellow in 1984. She was appointed by Ext.P1 against the vacancy of Sri.K.Balakrishnan. As per Ext.P2 she was re-appointed against the vacancy of Prof. P.V.Velayudhan Nambiar. They were holding classes for Degree and Pre-Degree, and they were regular Lecturers, one among whom was a Professor. Petitioner cannot be equated with Junior Lecturer appointed under G.O.30/06. It is stated that the entry cadre of Lecturer is termed as Junior Lecturer and hence petitioner was termed as Junior Lecturer in Exts.P1 and P2. Abolition of Pre-Degree has nothing to do with the

post the petitioner was holding. Petitioner had on the 5th day of Ext.P3 filed Ext.P4 and there is no waiver or relinquishment. Ext.R1(b) does not bring any new fact. Petitioner was paid basic salary, DA, HRA, increment etc. It was not paid as a grant. The quantum of salary paid to the petitioner by Government was made good by remittance by the UGC. This method will not take away the right of the petitioner to future appointment. Petitioner's appointment was also approved by the Deputy Director by following Exts.P1 and P2. Ext.R1(d) would show that the petitioner was a substitute teacher and petitioner would not lose the right with that nomenclature. Petitioner's right is protected under the Kannur University Act. It is stated that petitioner's selection process was as per norms and 28 persons have appeared for the process and 9 persons have turned up for the interview. It is further stated that the petitioner is unable to prove the nature of appointment, the method of selection held and the relieving, and the first respondent is in custody of the same.

5. The fourth respondent has filed a counter affidavit inter alia stating as follows:

It is stated that the mere fact that the vacancy has been notified and selection process has been conducted does not ipso facto confer any lien on the petitioner. It is further stated that appointment of the petitioner in Exts.P1 and P2 were for a fixed period in the vacancy arose on account of the deputation of the regular incumbents for higher studies. It is stated that the petitioner was re-appointed as per Ext.P2 only in view of the fact that the rank list by the College was in force at the time of arising the vacancy on 29.4.1987 and not on account of the lien as alleged by the petitioner. It is the case of the fourth respondent that petitioner is not entitled to any lien or preferential claim. It is further stated that the fourth respondent was appointed initially as Lecturer in Chemistry with effect from 21.3.2005 in the vacancy caused by the retirement of Smt.M.Lucy, Lecturer Selection Grade in Chemistry, which has been approved by the University as per proceedings dated 1.10.2005. It is further stated that thereafter on 19.11.2005 an order has been issued shifting the fourth respondent to the permanent retirement vacancy of Sri. A.P.Aravindakshan. Ext.R4 (a) is produced as proceedings of the first respondent appointing the

fourth respondent to the permanent retirement vacancy. Ext.R4(a) would show that the appointment of the fourth respondent has been approved by the University subject to the final disposal of this writ petition. It is shown that the fourth respondent has been shifted to the permanent vacancy caused by the retirement of Sri. A.P.Aravindakshan.

6. In the decision reported in **Mother Anasthasia v. University Appellate Tribunal**(1980 K.L.T. 666) a Division Bench had to consider the question as to whether a person who goes out of service on the expiry of the period for which he was appointed if can claim protection under Section 57(6) of the Calicut University Act, 1975. Section 57(6) of the Calicut University Act as it stood read as follows:

“Notwithstanding anything contained in sub-section (1) and (4) a teacher discharged from a private college on or after the 14th day of March, 1974 due to abolition of a course of study in that college or for any other reason except disciplinary action against him shall be given preference in the matter of future appointments in the private college or, as the case may be, or any of the private colleges under the management of the educational agency within the

University area.”

The Division Bench proceeded to take the view that petitioner is not entitled to the protection of the said provision. In arriving at the said view the court proceeded to hold as follows:

“The word “termination” is used both in the transitive and intransitive form. Not so the word 'discharge' in the law of master and servant. When a teacher works in a temporary leave vacancy, he or she has to go out of service on the expiry of the term for which he or she was appointed and there is nothing further that has to be done by the appointing authority for termination of this appointment. No order of discharge or relief is necessary in such cases. A person appointed in a temporary vacancy knows that her term will run out on a particular day and it is with this knowledge that he or she enters service. In other words, in all cases of temporary service for a particular period, what is to happen on the expiry of that period is known. Abolition of a course of study cannot be anticipated. There may be many other causes, not anticipated, not in the knowledge of any one which may result in the discharge of a teacher. When such reasons occur, the teacher goes out not voluntarily but on her being discharged from service by an act of the appointing

authority. The words 'abolition of a course of study' or 'for any other reason' indicate the object of the section. To include termination on the expiry of the term in the expression 'for any other reason' would not be proper. The words 'except disciplinary action' give a clear guideline to construe the word “reason” in the section. All such reasons would be those which were not in the contemplation of the parties when application was made. The dictionary meaning of the word 'discharge' may not assist us and dictionary meanings should not be the ultimate authority in matters of interpretation or statutes. 'Abolition of a course of study' is something that is beyond the control of the appointing authority or the teacher. When a course of study is abolished, the services of some teachers become redundant. Such teachers do not get out of the institution voluntarily, but are discharged from service for this reason. Such a teacher cannot be placed on the same part with a teacher who has to go out on the expiry of the term for which he or she was appointed. The expression 'for any other reason' has to take its colour from the preceding as well as the succeeding words. Termination of vacancy after the expiry of the period will never be discharge for a reason.”

The court also proceeded to refer to Rule 51A of Chapter XIVA KER

and then proceeded to hold as follows:

“The words used are “who are relieved.....on account of termination of vacancies”. These words admit of no doubt as to their intent. It is clear that teachers relieved on account of termination of vacancies are intended to be benefited and protected by this termination of vacancies are intended to be benefited and protected by this rule. The contrast between S. 57(6) of the Act and Rule 51A of Chapter XIVA of the KER is clear and tested in the light of the language used in Rule 51A, it becomes apparent that S.57(6) of the Act does not contemplate teachers who have to got out of service on account of termination of vacancies. The use of the word 'relieved' in the rule in contradistinction to the word 'discharge in S.57 (6) is not without significance. More useful will be to contrast the present section with its predecessor provision in the Kerala University First Statutes, 1972, Chapter XLIX Clause 4, which reads:

“Claim of thrownouts:- A teacher appointed on probation or for a specified period shall have the claim for appointment to the first vacancy within three years if he was thrown out of service for want of vacancy.”

A reading of this clause brings out how S.67)6) of the Act has departed from its predecessor. While the above clause

uses the work thrownout, S.57(6) of the Act uses the word discharge, again a significant and deliberate phraseology.”

Counsel for the respondents placed considerable reliance on the said decision. It is further pointed out that the same view was taken by the Apex Court in the decision reported in **State of Kerala v. Mother Anasthasia** (1997(1) K.L.T. 621). The Apex Court was dealing with Civil Appeal No.6768-69 of 1983 against the judgment of the Division Bench of this court in the writ petitions of the year 1976 and 1977. The teacher was appointed in a leave vacancy for a period of three months. She raised a claim on the strength of Section 57(6) of the Calicut University Act, 1975, which was the very same provision which was considered by the Division Bench in the decision in **Mother Anasthasia's Case**. The Apex Court held as follows:

“Admittedly, the third respondent was appointed in a leave vacancy for a short period of three months. The intendment of sub-s.6 appears to be only that when permanent teacher or teacher appointed on a regular basis is discharged from service due to abolition of the course of study in that college or for any other reason, obviously, other analogous causes other than disciplinary action, such

a teacher who held the post was given preferential treatment for future appointment. A temporary teacher in a leave vacancy cannot be considered as discharged nor claimed the status as discharged employee. Discharge would connote for any other reason ujus dem generis due to abolition of the post or course of study or such similar circumstances except for discharge due to misconduct. Such a teacher only will be eligible to set up preferential claim for appointment but not a teacher who fortuitously came to be appointed in a leave vacancy much less for a limited period.”

Learned counsel for the respondent therefore contended on the strength of these decisions that the matter was beyond doubt that the petitioner in this case has no legal right to lay a claim for future appointments on the strength of Exts.P1 and P2.

7. Learned counsel for the petitioner would counter this by pointing out that the law has not stood still. He points out the University Laws Amendment Ordinance, 1989 by which changes were effected to the University Laws. Thereunder the relevant provision after the amendment would read as follows:

“(b) a teacher relieved from a private college on or

after the 14th day of March, 1974 due to the abolition of a course of study in that private college or the cessation of the period for which he was appointed or for any other reason except disciplinary action against him, shall be given preference in the matter of future appointments in the private college or, as the case may be, any of the private colleges under the management of the educational agency within the University Area.”

It is pointed out that this Ordinance was published on 6.5.1989. He would point out that the petitioner was appointed by Ext.P1 order dated 25.9.1987 in the first spell and the second spell commenced under Ext.P2 order dated 31.8.1988. He would therefore claim that the petitioner is entitled to the benefit of the amended provisions. Going by the provisions of the amended provision, it is pointed out that there is significant departure from the earlier provisions. He would submit that unlike the words in the earlier provision after amendment the law provides for a right of reappointment for a teacher who has been relieved and the word discharged is no longer used. After the amendment the Section specifically provides that a right of

reappointment to a person who was relieved due to the cessation of the period for which he was appointed. This of course is apart from a teacher being relieved due to abolition of course of study possessing the right. Finally it is followed up by the omnibus provision providing for the right where the teacher is relieved for any other reason. It is the submission of the petitioner therefore that there cannot be any shadow of doubt that a teacher who is appointed for a particular period can demand a right to be reappointed if a teacher has been relieved upon the period for which a teacher was appointed expired. I am of the view that petitioner is right in contending that after the change of the law by virtue of the amendment if the petitioner is entitled to claim the benefit of the said provision otherwise petitioner has a statutory right of preference in the matter of future appointments. In **Thomas v. Manager, Bishop Moore College** (1987 (1) K.L.T. 613) a learned Single Judge of this court took the view that under the Kerala University First Statute a teacher who was appointed against a leave vacancy is entitled to be given preference in the matter of future appointment. The court took note of the fact that the appointment of

the petitioner was in strict conformity with the rules governing the same. His appointment was approved by the University and the salary was paid by the Government for the period. The court took the view that the fact that he is over aged cannot take away his right. Ofcourse Statute 23(2) of the Kerala University Act provided that a teacher duly appointed on probation or for a specific period if thrown out of service for reasons other than disciplinary action is to be given preference in the matter of future appointment. In the decision reported in **Mary Oommen v. Manager, M.G.M. High School, Kerala** (AIR 1987 SC 1163) the Apex Court was dealing with a case under Rule 51A of Chapter XIV A KER. The court took the view that a teacher who had worked in a vacancy earlier has a preferential right over a teacher who worked later in the same School.

8. One of the contentions of the learned counsel for the respondent is that petitioner is not entitled to the claim in view of the fact that the petitioner was not appointed even against a leave vacancy, but instead petitioner was appointed against a deputation vacancy. The incumbent in whose place the petitioner was appointed vide Exts.P1

and P2 came to be selected for FI Programme. As substitute in their place petitioner was appointed as per Exts.P1 and P2. It is further submitted that the entire salary was paid by the UGC. It is a contract between the College and the UGC, it is submitted. Therefore it is pointed out that petitioner is not entitled to the benefit of the provisions of Section 65(2) of the Kannur University Act. I am of the view that there is no merit in the contention of the respondents also. I would think that there is no merit in the contention of the respondent. Going by the provisions of the Section in question as amended, the petitioner was entitled to the same. Section 65(2)(b) of the Kannur University Act is on the same lines as amended provision of Section 57(6)(b) of the Calicut University Act already referred to. All that it provides inter alia is that the appointment of a teacher, the relieving of the teacher on or after 14th March, 1974 should be due to the cessation of the period for which the teacher was appointed and it should not be for a disciplinary reason. Admittedly the petitioner was not relieved on account of any disciplinary action taken. Petitioner was apparently relieved for the reason that the period for which petitioner was

appointed had run out. Admittedly the petitioner was appointed on the basis of a selection. The appointment of the petitioner has been approved by the Deputy Director and salary paid. No doubt, salary is ultimately paid by the UGC. It would also appear that the appointment of the petitioner has been approved by the University of Calicut. I would think that in such circumstances, it may not be legal or fair to deny the right of appointment to the petitioner under the provisions after the amendment, if the petitioner is entitled to the same.

9. Another contention taken by the respondent is that the petitioner was appointed as a Junior Lecturer and after the abolition of Pre-Degree course there is no post of Junior Lecturer and even assuming that petitioner has a right in view of the fact that there is no cadre of Junior Lecturer, the petitioner cannot have a legal right to be appointed as Junior Lecturer. This is met by the counsel for the petitioner by pointing out that actually in Exts.P1 and P2 though the designation of the petitioner is Junior Lecturer, it is to be noted that petitioner was appointed in the vacancy of Sri. K. Balakrishnan, who was a Lecturer in Chemistry. It is further pointed out that a perusal of

Ext.P2 would show that though petitioner was re-appointed as Junior Lecturer in Chemistry, it was against the vacancy of Prof. P.V. Velayudhan Nambiar, (who was in fact Professor Gr.II). It is pointed out that they were holding classes for Degree and Pre-Degree and they were regular Lecturers and one of them was a Professor and the petitioner is appointed to hold classes in their absence to both Pre-Degree and Degree, for which the petitioner was fully competent. It is pointed out that Government Order dated 12.2.1996 is providing for the cadre of Lecturers teaching exclusively for Pre-Degree with qualification and method of appointment different from that of regular Lecturer cannot be pressed into service by the respondents, as the petitioner was not appointed as Junior Lecturer as contemplated in the said Government Order for teaching Pre-Degree alone. It is submitted that the entry cadre of Lecturer is termed as Junior Lecturer. In such circumstances that the petitioner was termed as Junior Lecturer in Exts.P1 and P2. I am inclined to agree with the contention of the petitioner that the petitioner cannot be denied the right to preference in the matter of appointment under the law as amended, if otherwise

entitled to, for the reason that the appointment of the petitioner is seen termed as Junior Lecturer in Exts.P1 and P2. The very fact that the petitioner has been appointed against the vacancy of a Lecturer in the case of Ext.P1 and against the vacancy of Professor in Ext.P2 would only show that petitioner though termed as Junior Lecturer cannot be compared with Junior Lecturer as contemplated in the Government Order dated 12.2.1996. Therefore I reject the contention of the respondents in this regard. I am also not impressed by the contention of the respondents that if the contention of the petitioner is accepted, the implementation of the FIP will become difficult. It is to be noted that the petitioner has undergone a process of selection before she was selected vide Ext.P1. No doubt, it is the case of respondents 1 and 4 that the fourth respondent who came to be appointed on the basis of selection held has been subsequently shifted to another vacancy. It is to be noted that this court has passed an interim order that any appointment made by the first respondent filling up the post of Lecturer (Chemistry) will be provisional and subject to the result of the writ petition. This order was passed on 10.3.2005. Later on the writ

petition was amended and a specific challenge is mounted against the appointment of the fourth respondent. If that be so, it is clear that the right of the petitioner cannot be defeated. The appointment of the fourth respondent, if it is found illegal in view of preferential right of the petitioner, is only to be over turned.

10. The final question that arises for consideration however is that whether the petitioner is entitled to lay a claim under the provision as amended on the strength of Exts.P1 and P2. The amendment was brought into force on 6.5.1989. If the law applicable is the law in the unamended form, clearly the matter would be governed by the decision in **Mother Anasthasia's Case** and that of the Apex Court in **State of Kerala's Case**. However, if the petitioner is governed by the amended provision as already referred to, then the petitioner is entitled to succeed. Petitioner was appointed under Ext.P1 dated 25.9.1987. He came to be relieved on 15.6.1988. Thereafter when a vacancy arose the petitioner came to be re-appointed by Ext.P2, which is dated 31.8.1988. She worked from 1.9.1988 till 29.5.1989. Ext.P2 order would show that the petitioner was in fact reappointed. According to the petitioner

it is in recognition of her claim by virtue of Ext.P1 order. According to the petitioner the amendment came into force on 6.5.1989. Kannur University Act was framed in the year 1996. The petitioner at the time of Exts.P1 and P2 appointment was in fact governed by the Calicut University Act. At the time when the petitioner was originally appointed vide Ext.P1 it is clear that the law that governed the field was the unamended provision. When the petitioner was reappointed by Ext.P2 dated 31.8.1988, actually going by the provisions contained in the Act as interpreted in the decision in **Mother Anasthasia's case** and in **State of Kerala's Case** the petitioner did not really possess a right of reappointment. In fact a new Section was substituted in place of the provisions contained in Section 57(6) of the Calicut University Act. Sub Section (6) of Section 57 actually was substituted in place of the earlier provisions. The right given under Clause (b) of Sub Section (6) in fact is available to every teacher, who is relieved from a private college on or after the 14th day of March, 1974. Apparently when the decision was rendered by the Apex Court in **State of Kerala's Case**

Section 57(6) of the Calicut University Act has stood substituted. Paragraph 2 of the judgment would show that the court was considering the unamended provisions. Going by the provisions of the Calicut University Act Section 57(6)(b) read with Section 65(2)(b) of the Kannur University Act, it is clear that the petitioner stood relieved after 14.3.1974. Of course the petitioner was relieved pursuant to the second spell under Ext.P2 on 29.5.1989, which is after the date of the substitution in Section 57(6) of the Calicut University Act. I feel that in such circumstances the petitioner who stood relieved after the date mentioned in the provision,(namely on or after 14.3.1974) is entitled to the benefit of law providing for preference. The petitioner is entitled to succeed.

Accordingly the writ petition is allowed. It is declared that the appointment of the fourth respondent against the vacancy of teacher as notified in Ext.P3 is illegal and in disregard to the preferential claim of the petitioner. There will be a direction of the first respondent to grant reappointment as Lecturer in the Department of Chemistry in the Payyannur College against the vacancy notified vide Ext.P3. This

direction shall be complied with within a period of one month from the date of receipt of a copy of this judgment.

(K.M. JOSEPH, JUDGE)

sb

K.M.JOSEPH, JJ.

W.A. No. OF

JUDGMENT

Dated this the day of February, 2006.